IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1482 OF 1996

M/s. Lachhiram Chudiwala
154/6, Mittal Tower "B",
Nariman Point,
Mumbai 400 021. .. Petitioner

Vs.

1) Shri Begaram Saini
C/o Shri Kanakraj Raman,
Mohan Nagar B-24,
Dhanukarwadi, Datta Mandir
Road, Kandivali (West),
Mumbai 400 067.

2) Shri V.P. Patil
Presiding Officer
First Labour Court, 6th floor,
Arun Chambers, Tardeo,
Mumbai 400 024. .. Respondents

Mr. P.H. Purav with Mr. V.P. Sawant for Petitioner.
Mr. P. Ramaswami with Ms. Sheetal Chhabria i/by K.V. Aiyar & Associates for Respondent No.1.

CORAM: B.H. MARLAPALLE, J.

Date : August 05, 2005.

ORAL JUDGMENT :

1. This petition filed by the employer assails the final award passed by the First Labour Court, Mumbai in Reference (IDA) No.1159 of 1988 on 8-12-1995.

2. The facts leading to this petition could be shortly described as under.

. The respondent-employee was employed as a driver by the petitioner from July 1986 on a monthly salary of Rs.800/- and he was one of the 3 to 5 drivers. He was staying at the employer's house. Thus, in addition to his salary, he was also getting a facility of lodging and boarding. As per the employee he objected the employer on 29-8-1987 and requested him for regular duty hours, over time wages and duty card etc. mentioning the hours of work, weekly holidays and over time wages, if any. The employer purportedly got annoyed and he was not allowed to report for duty from that day onwards. He immediately approached the Bombay Gumasta Union which, in turn, put up his cause with the employer. He raised a demand for reinstatement on or about 25-11-1987 before the Conciliation Officer. On notice, the employer appeared before the Conciliation Officer and stated that the workman was not removed from service and on

the contrary he himself had stopped reporting for duty. The employer offered for reinstatement immediately and it is claimed that the employee put condition of backwages for reporting for duty. The Conciliation Officer submitted his failure report and, therefore, the demand was referred for adjudication by an order dated 23-12-1988 under the Industrial Disputes Act, 1947. Before the Labour Court the employee filed his statement of claim and reiterated that he was illegally terminated from service and the said termination was without any show cause notice, nor was there any enquiry held against him, no retrenchment compensation was paid to him and, therefore, the termination of his service is illegal, inoperative and void in law.

. The employer filed its written statement and reiterated that there was no termination of service and on the other hand the employee himself remained absent. It was also contended that on receiving representation from the Bombay Gumasta Union the employer immediately replied and intimated the employee to report for duty immediately. Similarly,

offer was also made by letter dated 23-4-1988 and also before the Conciliation Officer but the workman put the condition of backwages and did not report for duty. Both the parties had placed on record some documents, in support of his claim the employee stepped into the witness box and on behalf of the employer, the proprietor Tolaram Chudiwalla was examined. The Labour Court considered the rival contentions, the oral and documentary evidence and held that the employee was illegally terminated from service. However, before the final award was passed, the employer had submitted an application at Exh.C-9 on 13/3/1995 and prayed for directions to the employee to report for duty without prejudice to the rights of the respective parties. On 8/6/1995 the Labour Court directed other party to file say. Interim award came to be passed on 14/7/1995 directing the employee to report for work from 17/7/1995 and accordingly he reported to the duty. In the final award, the employer was directed to reinstate the workman with 75% of the backwages with continuity of service with effect from 29/8/1987.

2. In the impugned award, the Labour Court, as noted earlier, held that the employee was illegally terminated. This conclusion appears to be based on the reasoning that no charge-sheet was issued to the workman nor was there any enquiry conducted against him, there was oral termination and muster rolls seemed to have been manipulated. To say the least, these findings are indefensible. The evidence of the employer which has not been seriously disputed indicated that there were about 10-12 employees working in the firm and, therefore, obviously the provisions of the Model Standing Orders were not applicable. The employer in its Written Statement had very clearly stated that there was no termination that was effected on any count. The Labour Court misdirected itself while considering the employee's claim. In his Written Statement the employee claimed that retrenchment compensation was not paid to him and, therefore, it was necessary for the Labour Court to examine the issue of retrenchment and payment of compensation and after considering the decisions cited, the Labour Court has not recorded any finding, whether there was a case of illegal retrenchment. If

the Labour Court had recorded a finding that the termination was in breach of the mandatory requirements of Section 25-F of the Industrial Disputes Act, there could have been justification to hold that the termination was illegal.

3. However, Mr. Purav, the learned counsel for the petitioner-employer, has confined his arguments only to the point of backwages and more so because the Part- I award had already reinstated the employee. It was contended by Mr. Purav that in view of the consistent offer to report for duty made by the employer, there was no case for granting any backwages and more so when the Labour Court itself has recorded a finding that the offer made by the employer for reinstatement was not accepted by the employee because he wanted the backwages also to be paid. Under the circumstances the only issue that falls for consideration is, whether the employee is entitled for 75% of the backwages.

4. Mr. Ramaswami, the learned counsel for the respondent-employee, on the other hand has supported

fully the award by referring to the statement of claim submitted by the employee and the Written Statement filed by the employer. To deny the backwages the employer had claimed that the employee was gainfully employed during the intervening period and he was driving Taxi and Tourist Car at Lonawala and Khandala. This has been discarded by the Labour Court and rightly so. Mr. Purav submitted that right from the time the employer received the representation from the Bombay Gumasta Union, the employer had consistently stated that there was no termination of service and that the employee was called upon to join the duty. Such an offer was made before the Conciliation Officer as well and, therefore, the employee preferred of his own choice not to report to duty. Under such circumstances, he was not entitled for the benefit of 75% of the backwages. As per Mr. Purav the Labour Court considered the stand taken by the employee that unless backwages paid to him he would not report to duty and he has been penalised by reducing 25% of the backwages. Mr. Purav relied upon the following decisions of this Court in support of his contention that there was no case to grant 75% backwages to the

employee.

(a) Kala Silk Factory vs. Phankoo Bakas yada & Ors. - **1991 II CRL 888.**

(b) Rashtritya Hatmag Yantramag Kamgar Sangh vs. K.D. Kochargaonkar & Ors. - **2000 I CLR 917.**

(c) R.K. Kitchen Equipments (Messrs), Mumbai v. Majid Yusuf Hurape & Ors. - **2003 II CRL 794.**

. In addition, reliance has also been placed on the order passed by the Apex Court in the case of Government of Tamil Nadu & Anr. vs. K. Rajaram Appasamy - **1997 II CLR 23.**

5. All these decisions go to show that if the employer had made an offer of reinstatement and the same was not accepted by the employee for whatsoever reasons, there would not be any case of granting backwages.

6. In the instant case let us examine from the record, whether the employer made a bonafide offer and it was the employee who did not respond to the same for the reasons attributable to him. The employee

claimed that on 29-8-1987 he was not allowed to report for duty and, therefore, he approached the Bombay Gumasta Union. Exhibit C-17 is a letter dated 7/9/1987 addressed by the employer to the said Union and it shows that Union had approached the employer vide its letter dated 31/8/1987 regarding the grievance of the respondent-employee about his termination of service. The letter of the employer at Exh.17 concluded with an offer to resume duties forthwith. This letter was addressed to Mr. P.S. Bambaras, the General Secretary of Bombay Gumasta Union and in his cross examination the employee admitted that Mr. Bambaras had intimated to him about the employer's offer made in the said letter. When the employee approached the Conciliation Officer, the employer vide its letter dated 23/4/1988 (Exh.C-16) called upon the employee to join in service within seven days on receipt of the letter which was sent under Registered Post A.D. and the employee admitted to have received the same. The employee in his depositions before the Labour Court stated that he went to report for duty on 7/5/1988 i.e. after two weeks and not within seven days as stated by the

employer in its letter dated 23/4/1988, but he was not allowed to report to duty which he claims to have communicated vide his letter dated 24/5/1988 (Exh. U-6). The Conciliation Officer in his failure report submitted to the Deputy Commissioner of Labour noted, inter alia, thus:-

> " During the course of conciliation proceedings, the workman was asked to report on duties on 24th May, 1988 and subsequently parties were called for discussions on 27-6-88 & 29-6-88 when workman was not present. The conciliation proceedings were therefore concluded as non settle."

7. In his cross-examination the employee admitted that after 24/5/1988 he did not send any letter to the employer. On 7/5/1988 the employer addressed a letter to the Assistant Commissioner of Labour pointing out that the employee did not report for duty. The letter at Exhibit U-6 addressed by the employee to the Management concludes by reiterating his demand for full backwages and continuity of service. The Labour Court, therefore, recorded a finding that the workman put the condition about getting backwages and then only he would resume duty. The Labour Court termed this as an approach which was improper. These

findings put the blame on the employee for not reporting to duty. Mr. Purav, therefore, rightly relied upon the decisions cited hereinabove by contending that when the employee voluntarily and on the pretext of recovering full backwages from the employer refused to report for duty inspite of the offer made by the employer during the pendency of the reference, he was not entitled, in law, for any backwages. It has also come in the evidence of the workman that he possessed a Taxi Driving Badge. When the application at Exh.C-9 was submitted before the Labour Court on 13/3/1995, the employee was first called upon to file a say on 8/6/1995 and it would be relevant to consider the said reply given by the employee, which reads as under :-

> "The workman submits that it is a further attempt to delay the disposal of the matter. The allegations that the company had stated right from the beginning that the workman may without prejudice report for work is false. The workman submits that since the matter is

at the evidence stage the whole matter be decided at one stage."

7A. It also requires to be noted that the findings of the Labour Court to the effect that the employee's name was struck off from the muster roll are not supported by any reliable evidence, more so when it was admitted by the employee that he was signing the muster roll as and when he reported for duty.

8. In the premises, this petition succeeds partly under Article 227 of the Constitution. The impugned award is confirmed so far as the relief of reinstatement is concerned and the order of payment of 75% backwages is hereby set aside. The amount deposited is allowed to be withdrawn with the interest accrued thereon, by the petitioner.

(B.H. Marlapalle,J.)